

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION**

**CARDCONNECT, LLC,
Plaintiff,**

v.

**LAW OFFICE OF FRANCISCO J.
RODRIGUEZ and FRANCISCO J.
RODRIGUEZ,
Defendant.**

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CASE NO. 2:20-cv-01526

**LAW OFFICE OF FRANCISCO J.
RODRIGUEZ and FRANCISCO J.
RODRIGUEZ
Defendant/Third-Party Plaintiff**

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v.

**ANTONIO JUAREZ HERNANDEZ,
NEREYDA VEGA, ROYAL LIBERTY
OIL LEASING, LLC, AND ROYAL
INTERNATIONAL INVESTMENT
GROUP, LLC
Third-Party Defendants**

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**MOTION FOR EXTENSION OF TIME FOR SERVICE ON NEREYDA VEGA AND
ROYAL LIBERTY OIL LEASING, LLC**

TO THE HONORABLE UNITED STATES COURT CLERK:

COMES NOW LAW OFFICE OF FRANCISCO J. RODRIGUEZ and FRANCISCO J. RODRIGUEZ ("FJR"), Defendants/Third-Party Plaintiffs, and files this Motion for Extension of Time for Service on Nereyda Vega and Royal Liberty Oil Leasing, LLC, and shows the Court as follows:

INTRODUCTION

1. On March 24, 2020, Plaintiff CardConnect, LLC filed a complaint against Defendants Law Office of Francisco J. Rodriguez and Francisco J. Rodriguez (collectively “FJR”). FJR answered the suit on June 18, 2020.

2. On July 6, 2020, FJR filed a Third-Party Complaint against Third-Party Defendants Antonio Juarez Hernandez, Nereyda Vega, Royal Liberty Oil Leasing, LLC, and Royal International Investment Group, LLC. A signed summons was issued on July 27, 2020. (Doc. 16).

3. FJR accomplished service on Nereyda Vega and Royal Liberty Oil Leasing, LLC on October 9, 2020. FJR accomplished service on Royal International Investment Group, LLC on October 23, 2020.

4. Service on Royal International Investment Group, LLC was timely pursuant to this Court’s Order granting substitute service on Royal International Investment Group, LLC by November 2, 2020. (Doc. 24). However, service on Nereyda Vega and Royal Liberty Oil Leasing, LLC was due on October 5, 2020 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.¹ FJR requests that this Court grant this motion to extend the time for service on Nereyda Vega and Royal Liberty Oil Leasing, LLC to October 9, 2020, allowing FJR to obtain a certificate of default from the Clerk of Court.

ARGUMENT

5. Rule 4(m) of the Federal Rules of Civil Procedure provides that service must be accomplished within 90 days after the complaint is filed. Fed. R. Civ. P. 4(m). If a plaintiff shows good cause for the failure to serve within the time period prescribed by

¹ The 90th day of the service period fell on Sunday, October 4, 2020. Under Rule 6(a)(1), this deadline is moved to October 5, 2020.

Rule 4(m), the court must extend the time for service for an appropriate period. Fed. R. Civ. P. 4(m). However, district courts have discretion to grant extensions of the service period even in the absence of good cause. *Henderson v. United States*, 517 U.S. 654, 662-63 (1996); *Zapata v. City of New York*, 502 F.3d 192, 195-96 (2nd Cir. 2007). In showing good cause, the plaintiff need only provide “some colorable excuse for neglect” to avoid dismissal under Rule 4(m). See, e.g., *Etheredge-Brown v. American Media, Inc.*, 2015 WL 13881597, *2 (S.D.N.Y. 2015).

6. In this case, FJR accomplished service on Defendant Nereyda Vega and Royal Liberty Oil Leasing, LLC a mere 4 days after the service period under Rule 4(m). (Doc. 21; Doc. 22). When FJR’s process server, Jeremy Garate, was initially attempting service on Nereyda Vega and Royal Liberty Oil Leasing, LLC, he was trying to serve them both at 3400 N. McColl Rd., STE 25, in McAllen, Texas. This is the registered office address that was on file with the Texas Secretary of State, and Nereyda Vega is the registered agent for Royal Liberty Oil Leasing, LLC. **Exhibit 1.**

7. However, when Mr. Garate visited the address for service there was no business with the name “Royal Liberty Oil Leasing, LLC” located at that address, and nobody in nearby suites had ever heard of that business. Accordingly, FJR performed a “BeenVerified”² search for Nereyda Vega, and found her home address at 600 Heron Ave., McAllen, Texas 78504. Jeremy Garate then effectuated process on both Defendants Nereyda Vega and Royal Liberty Oil Leasing, LLC by serving Nereyda Vega at that address. (Doc. 21, Doc. 22). Accordingly, due to Royal Liberty Oil Leasing, LLC

² BeenVerified is a background check company that provides consumers criminal background checks and people search services through its website for a fee. One of the services it provides is current and historical address information for individuals.

either not updating the Texas Secretary of State with its current address, or otherwise not operating out of the address it listed with the Texas Secretary of State, FJR encountered difficulty in serving Nereyda Vega and Royal Liberty Oil Leasing, LLC. Therefore, there is good cause for the Court to extend the deadline for service under Rule 4(m), allowing FJR to obtain a certificate of default against these parties.

PRAYER

31. For the above reasons, FJR asks that the Court grant FJR's Motion for Extension of Time for Service on Nereyda Vega and Royal Liberty Oil Leasing, LLC, and grant FJR all other relief to which he is entitled.

Respectfully Submitted,

By: /s/ Francisco J. Rodriguez

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served to the following counsel of record on this 21st day of December, 2020, to wit:

VIA ECF-SERVICE: john.peterson@polsinelli.com

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/s/ Francisco J. Rodriguez
FRANCISCO J. RODRIGUEZ